

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C.

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV 22 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

Sixth Further Notice of Proposed)
Rule Making)

TO: The Commission

COMMENTS OF SILVER KING COMMUNICATIONS, INC.

William S. Reyner, Jr.
Michelle M. Shanahan

HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600

Attorneys for Silver King
Communications, Inc.

November 22, 1996

No. of Copies rec'd
List ABCDE

029

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	-i-
I. Introduction	1
II. The Early Recovery Of Channels 60-69 Would Severely Disrupt The Operations Of Stations With NTSC Or DTV Assignments In This Segment Of The UHF Spectrum.....	3
A. Recovery Of Channels 60-69 Would Undermine Silver King's Ability To Compete In The Marketplace	4
B. Any Safeguards Adopted By The Commission Would Be Inadequate To Protect Broadcasters Operating On Channels 60-69	6
III. The FCC's Proposed DTV Assignment For Silver King's Vineland, New Jersey, Station Would Prevent Silver King From Competing In The Philadelphia DTV Marketplace	7
A. WHSP's DTV Facilities On Channel 21 Would Likely Cause Interference To Land Mobile Operations	7
B. Potential Interference With Public Safety Services Would Compromise WHSP's Ability To Initiate Full-Power DTV Operations.....	11
IV. The Commission Should Preserve Stations' Flexibility To Maximize Or Modify Their NTSC And DTV Facilities	13

A.	In Replicating NTSC Service Areas, The Commission Should Consider Modification Applications Filed Before The Adoption Of This Sixth NPRM.....	14
B.	The Commission Should Permit Stations To Maximize Their Facilities Where Consistent With Other NTSC And DTV Channel Assignments.....	15
C.	The Commission Should Institute Procedures For The Prompt Modification Of NTSC And DTV Facilities	15
V.	The Commission Should Preserve The LPTV Service During And After The Transition to DTV Operations.....	17
VI.	Conclusion	19

SUMMARY

Silver King Communications, Inc. ("Silver King"), the owner of 12 full-power UHF stations -- *eight* of which are located between Channels 60 and 69 -- and 25 LPTV stations, supports the overarching principles set forth in the Comments being filed today by the "Broadcasters." Silver King, however, files these Comments in order to emphasize four areas of critical importance.

First, the Commission's proposed early recovery of UHF Channels 60 through 69 would have a devastating impact on Silver King's efforts to convert to a locally-oriented programming format. The recovery of Channels 60-69 would create additional interference, impede the maximization and modification of NTSC and DTV facilities, and give television manufacturers an incentive to omit Channels 60-69 from new television sets. These factors would unfairly and uniquely limit the ability of Silver King -- which is unique in having eight major market stations between Channels 60 and 69 -- to compete in the NTSC and DTV marketplaces and thus to improve the diversity of programming available to the public. While there are some safeguards that could help mitigate the damages, they would not remedy the devastating effects of the proposed immediate reclamation of Channels 60-69.

Second, the Commission's proposal to locate Silver King's Vineland, New Jersey station adjacent to the channel reserved for over 600 land mobile operators in the Philadelphia market would likely result in interference. This interference would delay the construction of WHSP's DTV facilities and would probably require WHSP to operate at dramatically-reduced power levels in order to

initiate DTV operations. WHSP's ability to compete in the Philadelphia DTV marketplace would suffer as a result.

Third, the Commission should ensure the diversity and quality of NTSC and DTV programming available to the public by considering modification applications filed before adoption of the Sixth NPRM, permitting stations to maximize their DTV facilities, and instituting procedures for the prompt modification of NTSC and DTV facilities.

Fourth, the Commission should adopt measures, including the rejection of the core spectrum approach, that will preserve the LPTV service. LPTV stations provide important services to rural areas, smaller cities and urban ethnic communities and should be protected.

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

In the Matter of)	
)	
Advanced Television Systems)	
and Their Impact Upon the)	MM Docket No. 87-268
Existing Television Broadcast)	
Service)	
)	
Sixth Further Notice of Proposed)	
Rule Making)	

TO: The Commission

COMMENTS OF SILVER KING COMMUNICATIONS, INC.

Silver King Communications, Inc. ("Silver King"), by its attorneys,
hereby submits its Comments on the Commission's Sixth Further Notice of
Proposed Rule Making, FCC 96-317 (released Aug. 14, 1996) ("Sixth NPRM") in the
above-captioned proceeding.

I. Introduction

Silver King owns 12 full-power UHF stations -- *eight* of which are
located between Channels 60 and 69 -- and 26 LPTV stations. 1/ The programming

1/ Silver King is the parent of the licensees of the following full-power television
stations:

WEHS-TV, Channel 60, Aurora, Illinois
KHSX-TV, Channel 49, Irving, Texas
KHSH-TV, Channel 67, Alvin, Texas
WHSW-TV, Channel 24, Baltimore, Maryland
WHSB-TV, Channel 66, Marlborough, Massachusetts
WHSE-TV, Channel 68, Newark, New Jersey
WHSI-TV, Channel 67, Smithtown, New York

on these stations consists primarily of a home shopping format at this time. However, under its new ownership, Silver King is in the process of planning the conversion of programming on its stations to include entertainment, news, information, sports, and children's programming. Silver King expects that within the next few years, this new program service will occupy a greater portion of the broadcast day than the home shopping service. In order to succeed in this conversion, however, the Commission's digital television ("DTV") allotments and channel assignments must not undermine the ability of any Silver King station to compete in the NTSC or DTV marketplace.

Silver King supports the overarching principles of the Comments being filed today by the "Broadcasters," a diverse group of television station owners (including Silver King) and networks, as a means of protecting stations from undue interference that would handicap their competitive positions. Specifically, Silver King agrees with the Broadcasters' opposition to the Commission's core spectrum approach, 2/ and to the Commission's plan for the immediate recovery of Channels 60 through 69 for non-broadcast uses. 3/ However, Silver King has not yet

WQHS-TV, Channel 61, Cleveland, Ohio
KHSC-TV, Channel 46, Ontario, California
WHSP-TV, Channel 65, Vineland, New Jersey
WYHS-TV, Channel 69, Hollywood, Florida
WHBS-TV, Channel 50, Tampa, Florida

2/ Sixth NPRM at ¶¶ 19-27.

3/ Id. at ¶ 25.

completed a detailed engineering analysis of the Broadcasters' proposals and reserves judgment on the specifics of their proposed DTV Table.

Silver King submits its individual Comments to emphasize the following points: (1) the recovery of Channels 60 through 69 would severely disrupt Silver King's ability to compete in many of its markets; (2) the Commission's proposed DTV channel assignment for WHSP in Vineland, New Jersey, could prevent WHSP from ever initiating DTV operations in the Philadelphia market; (3) the Commission should adopt a flexible approach toward the modification of NTSC and DTV facilities; and (4) the Commission should preserve LPTV services throughout the transition to digital television.

II. The Early Recovery Of Channels 60-69 Would Severely Disrupt The Operations Of Stations With NTSC Or DTV Assignments In This Segment Of The UHF Spectrum.

In the Sixth NPRM, the Commission suggested that it would recover UHF Channels 60-69 "almost immediately" for non-broadcast uses, while continuing to protect the few remaining full-service analog and digital broadcasters in that section of the spectrum. ^{4/} The rapid recovery of Channels 60-69 would unfairly and uniquely undermine the ability of Silver King -- which owns *eight* NTSC stations within the 60-69 band -- to compete in both the NTSC and DTV marketplaces. Moreover, there are no safeguards that would adequately protect broadcasters in the 60-69 band. Accordingly, the Commission should continue to

^{4/} Id. at ¶ 25.

reserve Channels 60-69 solely for broadcast uses until after the transition to digital television is complete.

A. Recovery of Channels 60-69 Would Undermine Silver King's Ability To Compete In The Marketplace.

The successful transition of Silver King's programming rests to a significant extent on its ability to improve its facilities and reach viewers throughout its markets. However, the Commission's proposed recovery of Channels 60-69 threatens Silver King's ability to achieve these goals and thus to compete with other broadcasters in each of its markets.

The proposed recovery of Channels 60-69 could result in serious interference to the remaining full-service broadcasters on these channels. We have never before experienced spectrum sharing between broadcast and non-broadcast users on such a grand scale. But significant interference has occurred even where the Commission has allotted just one or two channels in a market to non-broadcast users, such as land mobile operators. ^{5/} The experience could be much worse if the Commission recovers ten channels. While the Commission has stated that it would protect broadcasters on Channels 60-69 from interference by new licensees, ^{6/} there is no guarantee that these protections would be sufficient in this crowded area of the spectrum. Disputes concerning interference could take years to resolve, as they have in other conflicts. Such interference could prevent Silver King from providing

^{5/} See infra Section III.A.

^{6/} Sixth NPRM at ¶ 26.

a quality signal throughout its service areas. This diminishment of service would in turn prevent Silver King from competing with broadcasters on Channels 2-59, who would not be subject to this interference.

The proposed recovery of Channels 60-69 also could limit broadcasters operating on Channels 60-69 from maximizing or modifying their facilities. Not only would broadcasters need to coordinate with other NTSC and DTV signals in their segment of the spectrum when modifying facilities, but they also would need to coordinate with the many other occupants of the spectrum. This could leave very little room for the NTSC facilities improvements sought by Silver King or for the modifications necessary in order to maintain its existing facilities and respond to changed circumstances.

Additionally, Channels 60-69 may be needed for the successful operation of digital television, although it will not be possible to determine with certainty whether these channels are needed until after the transition is well under way and the use of DTV signals has begun. Therefore, this sizable portion of the spectrum should not be surrendered before its necessity for digital operations can be properly assessed.

Moreover, the early recovery of channels at the upper end of the UHF spectrum could give television manufacturers the incentive to exclude Channels 60-69 from new television sets while a few NTSC and DTV stations are still operating on these channels. Manufacturers might be encouraged to exclude these channels based on the small number of broadcasters on the channels and the plans to phase

out all broadcast use of these channels in the near future. The inability of new television sets to receive Silver King's stations on Channels 60 to 69 would have a devastating effect on Silver King's audience reach and would dramatically reduce the diversity of programming available to the public. The effect upon Silver King would be especially devastating because the majority of Silver King's stations are in this 60-69 band.

B. Any Safeguards Adopted By The Commission Would Be Inadequate To Protect Broadcasters Operating On Channels 60-69.

If the Commission decides to reclaim Channels 60-69 at any time before or during the transition to digital television, it must adopt a number of safeguards for the benefit of current users of the spectrum. First, any grant of spectrum to new users should be conditioned on the immediate termination of any interference to broadcasters. The burden of proof should rest with the new spectrum users. Second, the presence of non-broadcast users on Channels 60-69 should not affect broadcasters' ability to maximize or modify their NTSC or DTV facilities assigned to these channels.

Third, the new spectrum users should be required to compensate broadcasters for the cost of relocating to DTV channels in the core spectrum area, as the Commission has proposed. ^{7/} Fourth, the Commission should require television manufacturers to build sets which include Channels 60-69 until the very last broadcaster departs this portion of the spectrum.

^{7/} Id. at ¶ 26.

The above safeguards would *not* remedy the devastating effects of the proposed reclamation of Channels 60-69. Disputes over interference in this crowded portion of the spectrum would inevitably arise. Moreover, once the majority of broadcasters shift into the core spectrum, few viewers would venture into the hinterlands of the television band. The safeguards proposed above would merely help to mitigate the damage to Silver King to a limited extent.

III. The FCC's Proposed DTV Assignment for Silver King's Vineland, New Jersey, Station Would Prevent Silver King From Competing In The Philadelphia DTV Marketplace.

The Commission's proposed DTV Table assigns Silver King station WHSP-TV, Channel 65, Vineland, New Jersey, to DTV Channel 21. Channel 21 is adjacent to one of the channels reserved for land mobile operations, including public safety communications services, in the Philadelphia, Pennsylvania - New Jersey urbanized area (Channel 20). ^{8/} The proximity of these channels would likely cause interference to the public safety radio services on Channel 20. Such interference would delay construction of WHSP's DTV facilities and would probably require WHSP to operate at dramatically-reduced power levels. As a result, WHSP's ability to compete in the Philadelphia DTV marketplace would be devastated.

A. WHSP's DTV Facilities On Channel 21 Would Likely Cause Interference To Land Mobile Operations.

First, interference would likely arise because WHSP would be short-spaced to Channel 20. In order to avoid interference, the Commission has proposed

^{8/} See 47 C.F.R. § 2.106, note NG66; Sixth NPRM at n.77.

co-channel and adjacent channel spacings of 250 km (155 miles) and 176 km (110 miles), respectively, between DTV stations and the city-center of land mobile operations. 9/ The Commission tentatively concluded that this spacing approach is “appropriate for regulating interference between DTV stations and existing land mobile operations.” 10/ However, WHSP’s Channel 20 allotment is one of nine cases where DTV allotments would be less than 110 miles from adjacent channel land mobile operations. 11/ Thus, under the Commission’s own proposed rules, the spacing to WHSP’s DTV channel would *not* be sufficient to regulate interference.

Second, the spectrum congestion in the Philadelphia market, where the Commission has granted over 600 licenses for land mobile uses of Channel 20, 12/ is particularly acute. The Commission singles out WHSP’s allotment in Philadelphia as unique even among the nine cases of short spacings between DTV stations and land mobile operations. 13/ While proposing to continue use of Channel 20 for land mobile operations in Philadelphia, the Commission “recognize[d] that the elimination of Channel 20 for land mobile operations in

9/ Sixth NPRM at ¶ 76.

10/ Id.

11/ Id. at n.96.

12/ Id. at n.78.

13/ Id. at ¶ 77.

Philadelphia could significantly reduce the interference among TV stations in the congested northeast corridor.” 14/

Third, the experience of NTSC television stations operating on channels adjacent to land mobile operations demonstrates that it is almost impossible to prevent interference between television stations and adjacent land mobile receivers. Moreover, any complaints of interference to public safety radio services, either actual or perceived, will be taken very seriously in light of the potential life and death consequences of any such interference.

For example, the government of Fairfax County, Virginia, and the Metropolitan Police Department of the District of Columbia have complained for over five years that operation of WTMW(TV), Channel 14, Arlington, Virginia, would create interference to their public safety radio services. 15/ In 1993, the Commission granted WTMW program test authority to operate at no higher than 50% of the station’s authorized power in order to prevent this interference. 16/ Three years later, WTMW still has not received authority to operate at full power.

14/ Id.

15/ See id. at 515, n. 39 (referencing clash between parties existing as of August 1991). The potential interference to the Fairfax County, Virginia communications services was resolved in 1993, see Construction Permit File No. BLCT-930406KF (August 3, 1993), but WTMW’s dispute with the District of Columbia continues.

16/ See Station WTMW(TV), Arlington, Virginia, Construction Permit File No. BLCT-930406KF (August 3, 1993); Station WTMW(TV), Arlington, Virginia, Construction Permit File No. BLCT-930406KF (October 15, 1993).

Station KTVJ(TV), Channel 14, Boulder, Colorado, has been the subject of complaints concerning interference to adjacent-channel land mobile operations for an even longer period of time. In 1991, the Commission noted that construction of KTVJ(TV) had been delayed "for several years," because of a high concentration of land mobile stations near its authorized transmitter site. 17/ Five years later, KTVJ is operating at *less than 10%* of authorized power, pending resolution of an intermodulation problem with the City of Denver. 18/ Even this power level is unsatisfactory to a coalition of land mobile operators who have submitted two requests for suspension or revocation of KTVJ's program test authority. 19/

WHSP's operation on Channel 21 would generate even greater concerns given the congestion of the spectrum in the Philadelphia area. Indeed, the mere proposal to locate WHSP's DTV operations on Channel 21 has *already* created

17/ Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations, 6 FCC Rcd at 5153 n.39.

18/ See Letter of John R. Feore, Jr., of Dow, Lohnes & Albertson to Clay Pendarvis, Chief, Television Branch, Mass Media Bureau, Federal Communications Commission, regarding KTVJ(TV), Boulder, Colorado (March 20, 1996); Letter of Thomas J. Hutton of Dow, Lohnes & Albertson to Clay Pendarvis, Chief, Television Branch, Mass Media Bureau, Federal Communications Commission, regarding KTVJ(TV), Boulder, Colorado (June 26, 1996).

19/ See Letters of Dudley P. Spiller and Andrew Cohen of Gorsuch Kirgis L.L.C. (Counsel to the Cities of Lakewood, Littleton, Boulder and Glendale; Martin Marietta Astronautics Group; The University of Colorado; St. Anthony's Hospital; STI Mobile Communications; and Motorola Communications) to Clay Pendarvis, Chief, Television Branch, Mass Media Bureau, Federal Communications Commission, regarding KTVJ(TV), Boulder, Colorado (March 1, 1996 and June 14, 1996).

an uproar in at least one community. Franklin Township has adopted a resolution opposing WHSP's Channel 21 allotment because of expected interference from Channel 21 to the township's police, fire and ambulance radio services. 20/ It also has urged the Commission not to assign Channel 21 to the Philadelphia region. 21/

B. Potential Interference With Public Safety Radio Services Would Compromise WHSP's Ability To Initiate Full-Power DTV Operations.

Under the standards currently applicable to NTSC stations, WHSP could not initiate DTV operations on Channel 21 until it resolved all potential interference to land mobile operations. Yet, in order to resolve potential interference, WHSP would have to reduce power levels substantially, thereby threatening WHSP's ability to reach viewers in the Philadelphia market.

Under the present regulatory scheme, new television stations on Channels 14 and 69 that are adjacent to land mobile operations must "identify potential cases of interference caused by out-of-band TV emissions, land mobile receiver desensitization or intermodulation. They must install necessary filters, take other necessary precautions and submit evidence that no interference is being caused before they will be permitted to transmit programming on the new

20/ Dyer, Digital TV Plan Draws Static, The Philadelphia Inquirer (November 11, 1996) at B1; Gentieu, Static: TV Channel May Disrupt Emergency Transmissions, Gloucester County Times (November 13, 1996), at A-1.

21/ Letter of Director, Communications Center, County of Gloucester, New Jersey, to Secretary, FCC, MM Docket No. 87-268 (October 29, 1996).

facilities.” 22/ Broadcasters must cooperate in the resolution of any problem, even where the source of the interference is beyond the station’s control. 23/ Therefore, broadcasters may be forced to help correct problems resulting from faulty land mobile receivers.

Compliance with this standard can be extraordinarily costly, since it often requires special equipment and years of services from engineering consultants. More importantly, the standard is unrealistic because interference often cannot be resolved. These unrealistic standards result in substantial delays in service, as evidenced in the WTMW and KTVJ cases. 24/ After years of delays, stations adjacent to land mobile operations are often forced to reduce power levels significantly in order to initiate operations. Such a delay or forced reduction in power level would severely impair Silver King’s ability to compete in the Philadelphia DTV marketplace and would minimize the diversity of programming available to the public.

Given the potentially devastating impact of WHSP’s DTV channel assignment on its ability to compete in the Philadelphia DTV marketplace, the

22/ Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations, 6 FCC Rcd 5148, 5153 (1991); see also 47 C.F.R. 73.687(e)(4)(ii). This standard essentially codified principles that the Commission had applied on a case-by-case basis to earlier instances of interference. Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations, 6 FCC Rcd at 5148.

23/ Id. at 5154.

24/ See supra Section III.A.

Commission should assign WHSP to another DTV channel and leave Channel 21 vacant. If the Commission abandons its core spectrum approach, as the Broadcasters have advocated, it will have more channel options available for the reassignment of WHSP's DTV channel.

If the Commission does not reassign WHSP to another DTV channel, it should eliminate the use of Channel 20 for land mobile operations in the Philadelphia market. However, the Commission should not require adjacent-channel broadcasters to provide financial assistance for the relocation of land mobile operators, as it has suggested. ^{25/} The costs of moving up to 600 land mobile operators would be far too burdensome for one company. More importantly, Silver King should not be burdened with such costs merely because it had the misfortune over all Philadelphia-area stations to be assigned to Channel 21 by the Commission.

IV. The Commission Should Preserve Stations' Flexibility To Maximize Or Modify Their NTSC And DTV Facilities.

The successful conversion of Silver King's programming format depends in part upon its ability to maximize the service areas and improve the signal quality of its stations. Silver King would have been able to implement such improvements to its NTSC facilities expeditiously if the transition to digital television had not begun. The transition to DTV should not now prevent it from improving its competitive position. The Commission can increase the diversity of

^{25/} Sixth NPRM at ¶ 77.

programming and quality of signals available to the public by considering modification applications filed before the adoption of the Sixth NPRM, permitting stations to maximize their DTV facilities, and instituting procedures for the prompt modification of NTSC and DTV facilities.

A. In Replicating NTSC Service Areas, The Commission Should Consider Modification Applications Filed Before The Adoption Of This Sixth NPRM.

The Commission's proposed DTV Table replicates the NTSC service areas of eligible broadcasters. 26/ Silver King agrees that the DTV Table should replicate existing NTSC contours. However, when replicating geographic areas, the Commission should consider modification applications that were filed *before* the adoption of the Sixth NPRM on July 25, 1996. 27/

First, to ignore these modification applications would unfairly impose a retroactive condition on broadcasters that would handicap certain stations in the DTV marketplace from the start. Second, consideration of such modification applications would improve the DTV service of the applicants and thus serve the public interest.

Silver King currently has ten modification applications pending, all of which were filed before July 25, 1996. 28/ A grant of these applications would

26/ Id. at ¶ 13.

27/ See id. at ¶ 63.

28/ See FCC File Nos. BPCT-960708KF-KG, BPCT-960709KE, BPCT-960709KJ-KL, BPCT-960710KG, BPCT-960716KI-KK.

enable Silver King stations to upgrade their antennas, improve signal quality and increase service areas. A grant of the application to modify Silver King station WHSP, Vineland, New Jersey, for example, would enable WHSP to serve an additional 139,477 persons. 29/ By replicating the Silver King stations' NTSC signals with these improvements, the Commission would enable Silver King to provide improved DTV signals that would better serve the public interest.

B. The Commission Should Permit Stations To Maximize Their Facilities Where Consistent With Other NTSC And DTV Channel Assignments.

Whether or not the Commission considers modification applications filed before adoption of the Sixth NPRM, it should permit stations to maximize their DTV facilities, consistent with other NTSC and DTV assignments, after the DTV assignments are finalized. 30/ Flexible procedures for maximizing DTV facilities will help improve the DTV services available to the public. Moreover, the Commission should permit stations assigned to Channels 60-69 to maximize their facilities without regard to any new non-broadcast users of the spectrum if the Commission recovers Channels 60-69.

C. The Commission Should Institute Procedures For The Prompt Modification Of NTSC And DTV Facilities.

Silver King urges the Commission to adopt procedures for reviewing modification applications that are prompt, flexible and certain. Broadcasters will

29/ See FCC File No. BPCT-960716KJ (Engineering Exhibit, at 1-2).

30/ See Sixth NPRM at ¶ 13.

continue to use their NTSC facilities until the transition to DTV is complete. They will need to improve their facilities and/or respond to changed circumstances many times during this time period. Uncertainty concerning the treatment of NTSC applications during the transition to DTV would delay necessary improvements and hinder broadcasters' ability to compete in the video programming marketplace.

In the Sixth NPRM, the Commission stated that it would continue to permit broadcasters to file modification applications (presumably including applications to maximize NTSC facilities) throughout this proceeding, but would condition the grant of such modification applications on the final DTV Table adopted by the Commission. ^{31/} Conditioning modification application grants on the final DTV Table could create undesirable uncertainty and delays. Broadcasters would be unwilling to undertake costly improvements if these improvements may be undone by a later FCC decision. Thus, the Commission should not impose such a condition on any modification application filed before the adoption of the Sixth NPRM. Moreover, the Commission should act expeditiously to adopt a final DTV table.

Once the transition to DTV begins, the Commission also should implement prompt, flexible and certain procedures for the modification of DTV facilities. There will be frequent modifications as broadcasters begin to construct the first DTV facilities. Silver King believes that at least one of its existing towers will not accommodate digital operations. It therefore will need to modify its

^{31/} Id. at ¶ 63.

facilities once it locates an appropriate site. Simple modification procedures will ensure a smooth transition to digital television.

V. The Commission Should Preserve The LPTV Service During And After The Transition To DTV Operations.

The Commission estimates that its proposed DTV table will displace approximately 35%-45% of existing LPTV stations from their current channels once the conversion to digital begins. 32/ Additional LPTVs will be affected by the proposed recovery of Channels 60-69 for non-broadcast uses. 33/

LPTV stations are essential for the provision of programming to rural areas and urban ethnic communities. Moreover, the existence of the LPTV service has increased the diversity of media ownership, 34/ and the diversity of programming available to the public. For example, Silver King has used its LPTV stations to gain access to smaller market cities that lack sufficient channel space or that otherwise cannot support another full-power television station, thus increasing the diversity of programming available in these markets. A DTV table of allotments that diminishes the LPTV service would have a detrimental impact on the public interest. Accordingly, Silver King urges the Commission to take all

32/ Id. at ¶ 66.

33/ Id.

34/ Id. at ¶ 67; see also An Inquiry into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System, Notice of Inquiry, 68 F.C.C.2d 1525 (1978) (low power television service designed to increase the diversity of programming to rural and urban areas).

possible steps to protect the LPTV service during and after the transition to digital television.

One of the most effective means of preserving the LPTV service would be the rejection of the core spectrum approach. The Commission should use the entire VHF and UHF spectrum for DTV allotments and repack the spectrum only after the transition, when it is better able to assess the amount of spectrum needed for both DTV and LPTV services. If the Commission designates a core spectrum, there will not be enough spectrum available for LPTV services.

The Commission has proposed permitting LPTV operations on channels outside the core spectrum until a displacing DTV station or new user is operational, 35/ but has failed to propose adequate methods of remedying the damage to the LPTV service. First, as spectrum outside of the core area is recovered for non-broadcast uses, the non-core channels used by LPTV stations will become subject to increasing interference. If the Commission adopts the core spectrum approach and assigns non-core spectrum for non-broadcast uses, LPTV services should not be secondary to these new users, as the Commission has proposed. 36/ Second, television manufacturers may stop building television sets that include channels outside of the core spectrum.

The Commission also should adopt its proposal to allow displaced LPTV stations to take terrain and other appropriate engineering factors into

35/ Sixth NPRM at ¶¶ 67-68.

36/ Id. at ¶ 68.

account in finding replacement channels. ^{37/} Additionally, the Commission should adopt its proposal to permit displaced low power stations to file applications for suitable replacement channels in the same area that are not subject to competing applications, pursuant to the procedures set forth in Section 73.3572 of the Commission's rules. ^{38/} Silver King urges the Commission to be receptive to other proposals that will help preserve the important LPTV service during the transition to digital television.

VI. Conclusion

Silver King urges the Commission to adopt a DTV Table which does not hinder Silver King's ability to compete in either the NTSC or DTV marketplace. The Commission's current proposal for the immediate recovery of Channels 60 through 69 would unfairly and uniquely impact the competitive ability of Silver King, which has eight major market stations in the 60-69 band. Accordingly, the Commission should reject its proposal for the early reclamation of Channels 60-69.

The Commission also should assign Silver King a DTV channel in the Philadelphia market which is not adjacent to the channel reserved for land mobile operations. Silver King's Channel 21 DTV assignment would likely result in interference, which could delay the initiation of Silver King's Philadelphia DTV operations for years and severely undermine its ability to compete in the Philadelphia DTV marketplace. The Commission also should consider modification

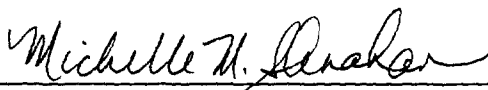
^{37/} See *id.* at ¶ 71.

^{38/} *Id.* at ¶¶ 67 & n.69.

applications filed before adoption of the Sixth NPRM and should establish flexible procedures for the maximization and modification of NTSC and DTV facilities. Furthermore, the Commission should adopt measures which will protect LPTV stations.

Respectfully submitted,

**SILVER KING
COMMUNICATIONS, INC.**

By: 
William S. Reyner, Jr.
Michelle M. Shanahan

HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600

Its Attorneys

November 22, 1996